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10/657,809	09/08/2003	Kent Douglas Ellis	329228001US6	1125

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EXAMINER

JEFFERY, JOHN A

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 06/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/657,809

Applicant(s)

ELLIS ET AL.

Examiner

John A. Jeffery

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-13, 15-36, 40-53 and 64-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13, 28 and 29 is/are allowed.
- 6) ☒ Claim(s) 7-12, 15-27, 30-36, 40-53 and 64-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)          |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. <u>20040617</u> .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/27, 10/24, 1/26</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Joint Inventors--Common Ownership Presumed***

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligations under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of Balonick et al (US 5,136,741) and further in view of Balonick et al (US

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5,398,354). JP10-43258 discloses an operating table heater comprising a carbon-based electric heating element 22 sandwiched between foam layers 10A, 10B (note "sponge or the like" in the abstract and "rubber sponge" in the computer English language translation). Note also temperature sensors 35-37 coupled to an electronic control system to control the power applied to the electric heating elements in accordance with the desired temperature input via temperature setting section 43 comprising a one-touch switch. A temperature display 40 displays the sensed temperature. See abstract and computer English language translation.

The claims differ from the previously cited prior art in calling for a waterproof and antimicrobial cover covering the foam. But such covers are well known in the art as evidenced by Balonick et al (US 5,136,741) noting col. 1, lines 56-58. Although Balonick et al (US 5,136,741) does not expressly state the cover is antimicrobial in the '741 patent, such a fact is noted in col. 1, lines 47-51. In view of Balonick et al (US 5,136,741) and Balonick et al (US 5,398,354), it would have been obvious to one of ordinary skill in the art to provide an antimicrobial cover for the foam material in the previously described apparatus to protect the underlying foam from moisture ingress as well as retard the growth of microbes on the pad.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of Balonick et al (US 5,136,741), Balonick et al (US 5,398,354), and further in view of DE2308214. The claim differs from the previously cited prior art in calling for a sealed connector secured to the cover to provide power to the heating

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element. Providing power to electrical heating elements via sealed connectors in patient support devices is conventional and well known in the art as evidenced by noting the unlabeled sealed connector in Fig. 1 connecting heater power cord 14 with the patient support cover 1. Such a connection enables prompt, easy, and repeatable connection and disconnection of electric power to the heater. In view of DE2308214, it would have been obvious to one of ordinary skill in the art to provide a sealed connector in the previously described apparatus to enable prompt, easy, and repeatable connection and disconnection of electric power to the heater.

Claims 17-22, 7, 8, 64-66, and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of Bull et al (US 2,255,376). The claims differ from the previously cited prior art in calling for at least a portion of a temperature sensor to be closer to the second surface of the foam pad than the first surface of the foam pad. Providing a temperature sensor positioned such that it is closer to the surface of the pad is conventional and well known in the art as evidenced by Bull et al (US 2,255,376), noting temperature sensor 11 in Fig. 2. By being closer to the outer surface of the pad, the sensor can still sense the temperature of the electric heating element, but shielded somewhat from the heating element thus enhancing physical protection of the sensor. In view of Bull et al (US 2,255,376), it would have been obvious to one of ordinary skill in the art to mount the temperature sensor closer to the exterior of the pad in the previously described apparatus to sense the temperature of the electric heating

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element, yet shield the sensor somewhat from the heating element thus enhancing physical protection of the sensor.

Claims 67 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of Bull et al (US 2,255,376), Balonick et al (US 5,136,741) and further in view of Balonick et al (US 5,398,354). The claims differ from the previously cited prior art in calling for a flame-resistant and antimicrobial cover covering the foam. But such covers are well known in the art as evidenced by Balonick et al (US 5,136,741) noting col. 1, lines 56-58. Although Balonick et al (US 5,136,741) does not expressly state the cover is antimicrobial in the '741 patent, such a fact is noted in col. 1, lines 47-51. Moreover, in view of its material, the cover is inherently flame-resistant. In view of Balonick et al (US 5,136,741) and Balonick et al (US 5,398,354), it would have been obvious to one of ordinary skill in the art to provide an antimicrobial cover for the foam material in the previously described apparatus to protect the underlying foam from moisture ingress as well as retard the growth of microbes on the pad.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of Bradford (US 2,441,005). The claim differs from the previously cited prior art in calling for a flexible coupling providing a hinge-like connection between the first and second pad portions. Hinging two electrically-heated pad portions via a flexible connection, however, is well known in the art. Bradford (US 2,441,005), for example, discloses in Figs. 1 and 2 a flexible connection 21 that enables hinging the pad sections

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relative to each other as desired. See Figs. 3 and 4. In view of Bradford (US 2,441,005), it would have been obvious to one of ordinary skill in the art to provide a flexible hinging connection for the heated pad of the previously described apparatus to enable hinging the pad sections relative to each other as desired.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of Bull et al (US 2,255,376) and further in view of DE3707948. The claim differs from the previously cited prior art in calling for a reflective sheet wherein the foam pad is between the reflective sheet and the heater. Providing such an arrangement is conventional and well known in the art as evidenced by DE3707948 noting reflective sheet 7 in Fig. 2 disposed on the opposite side of foam layer 6 so that heat is directed upwardly back towards the heater and the area to be heated. In view of DE3707948, it would have been obvious to one of ordinary skill in the art to provide a reflective sheet on the side of the foam layer opposite that of the heater so that heat is reflected back towards the heater and towards the workpiece thereby avoiding undesired wasted heat energy.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of Bull et al (US 2,255,376), DE3707948, and further in view of Bender (US4310745). The claim differs from the previously cited prior art in calling for the reflective material to be polyethylene. Although the reflective material of DE3707948 is aluminum, the substitution of polyethylene films for aluminum films as reflector layers in

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planar electrically heated structures is conventional and well known in the art as evidenced by Bender (US4310745) noting col. 3, lines 35-43. In view of Bender (US4310745), it would have been obvious to one of ordinary skill in the art to substitute polyethylene for aluminum in the previously described apparatus so that a polymer material and metallic emulsion could be utilized, thereby enabling the reflectivity to be controlled via the emulsion process.

Claims 23, 24, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of Bull et al (US 2,255,376) and further in view of Stinger (US3900654). The claims differ from the previously cited prior art in calling for the heater to comprise copper braids and carbon-filled plastic material. Providing an electric heater including a carbon-filled plastic material is conventional and well known in the art as evidenced by Stinger (US3900654) noting copper electrodes 3 connected to carbon-filled plastic material 1 which provides heat upon energization. The heater is flat, thin, flexible, and provides heat over an extended area. See col. 1, lines 13-30 and col. 2, lines 26-46. In view of Stinger (US3900654), it would have been obvious to one of ordinary skill in the art to provide a carbon-filled plastic material so that a heater is provided that is at, thin, flexible, and provides heat over an extended area, yet is economical to manufacture.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of Bull et al (US 2,255,376) and further in view of Fenner, Sr.



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(US5031261). The claim differs from the previously cited prior art in calling for the upper foam pad to have a higher density than the lower pad. Providing laminated upper and lower foam pads for patient support where the upper foam pad has a higher density is conventional and well known in the art as evidenced by Fenner, Sr. (US5031261) noting col. 3, lines 17-22 and 52-56 (upper layer density = 2.0 - 2.7 lbs/ft<sup>3</sup> and lower layer density = 1.8-2.0 lbs/ft<sup>3</sup>). According to col. 2, lines 4-23, such a density differential provides an improved floatation characteristic that avoids high pressure points on the patient. In view of Fenner, Sr. (US5031261), it would have been obvious to one of ordinary skill in the art to provide a higher density upper foam layer with respect to the lower foam layer in the previously described apparatus in order to provide an improved floatation characteristic that avoids high pressure points on the patient. Moreover, no criticality is seen in the specific recited density values and IFD ratings claimed; therefore, such values are not patentable over the foam layers of the prior art.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of Bull et al (US 2,255,376) and further in view of JP3-165746. The claim differs from the previously cited prior art in calling for the carbon-filled plastic to be substantially radiolucent. Although Stinger (US3900654) does not expressly state the carbon-filled material is radiolucent, using such materials in heating mats used in medical diagnosis applications is well known in the art. For example, JP3-165746 teaches that a planar heater made of carbon material is used so that excellent X-ray permeability is achieved. See abstract. In view of JP3-165746, it would have been

obvious to one of ordinary skill in the art to use an amount of carbon sufficient for X-ray permeability in the previously described apparatus so that the patient could be X-rayed with the heater disposed adjacent to the patient without affecting X-ray radiation.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of Bull et al (US 2,255,376) and further in view of CA969621. The claim differs from the previously cited prior art in calling for a grounding device in contact with the patient to electrically ground the patient. Electrically grounding patients to protect them from shock due to electrical medical equipment is conventional and well known in the art as evidenced by CA969621 noting P. 4, lines 10-15 and Figs. 1 and 2 wherein the patient is grounded for shock protection. In view of CA969621, it would have been obvious to one of ordinary skill in the art to provide an electrical ground path connected to the patient in the previously described apparatus in order to protect the patient from electrical shock from the adjacent electrical medical equipment.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of Koch (US5385529). The claim differs from the previously cited prior art in calling for an auxiliary temperature sensor to determine and display the patient's temperature. Providing a patient temperature sensor to display the same in conjunction with an electric heater control system for medical applications is conventional and well known in the art as evidenced by Koch (US5385529) noting temperature sensors 5 and 6 adapted to measure the patient's temperature for display on a display unit 13, 14. In

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view of Koch (US5385529), it would have been obvious to one of ordinary skill in the art to provide patient temperature sensors in conjunction with the previously described apparatus so that the temperature of the patient was monitored during the heating process thereby ensuring the patient was not overheated.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of Balonick et al (US 5,136,741), Balonick et al (US 5,398,354), and further in view of Abbas et al (US5265296). The claim differs from the previously cited prior art in calling for a moisture sensor connected to the display/record device.

Providing a moisture sensor in conjunction with a patient diagnostic system is conventional and well known in the art as evidenced by Abbas et al (US5265296) noting moisture sensor 44 that provides a control signal to an indicator 46 to warn medical personnel when moisture is detected. See col. 2, lines 43-53. In view of Abbas et al (US5265296), it would have been obvious to one of ordinary skill in the art to provide a moisture detector and indicator in conjunction with the previously described apparatus in order to warn medical personnel when moisture is detected.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of Schneider, Sr. (US5494051). The claim differs from the previously cited prior art in calling for a blood pressure cuff. Providing a blood pressure cuff to measure blood pressure and displaying the same on a display apparatus in conjunction with a patient support is conventional and well known in the art as evidenced by

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Schneider, Sr. (US5494051) noting cuff 38 and display device 56. In view of Schneider, Sr. (US5494051), it would have been obvious to one of ordinary skill in the art to provide a blood pressure cuff in conjunction with the previously described apparatus so that the patient's blood pressure could be monitored during use.

Claims 34-36, 47, and 49-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of DE2308214 and further in view of Theilacker et al (US5138138). The claims differ from the previously cited prior art in calling for a mobile support structure and a control device attachable thereto. Providing a mobile support for a patient with attachable heater control is conventional and well known in the art as evidenced by DE2308214 noting Fig. 1 where heater control housing 2 is attached to the support. Although the control unit does not enable the user to select a specific temperature, the use of temperature selectors in conjunction with heater control units in heated patient support surfaces is conventional and well known in the art as evidenced by Theilacker et al (US5138138) noting temperature selector buttons 46, 47 in Fig. 8 that enable specific temperatures to be selected by the user. See col. 11, lines 2-32. In view of Theilacker et al (US5138138), it would have been obvious to one of ordinary skill in the art to provide a sealed connector with temperature selector control unit removably attached thereto in order to enable the user to removably electrically connect and disconnect the control unit to the heated support as desired and select the desired temperature remotely. With regard to claims 52 and 53, no criticality is seen in the use of audio or digital indicators as compared to the visual indicators of the prior art.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of DE2308214, Theilacker et al (US5138138), and further in view of Cranston et al (US5324911). The claims differ from the previously cited prior art in calling for the control unit to be beneath the bed portion. Disposing a heater control unit beneath a bed portion in a patient support heater is conventional and well known in the art as evidenced by Cranston et al (US5324911) noting control unit 24. and support surface 10. Such a mounting ensures the control unit is out of the way and the unit and associated wiring does not interfere with surgical operations. In view of Cranston et al (US5324911), it would have been obvious to one of ordinary skill in the art to locate the control unit beneath the bed in the previously described apparatus in order to ensure the control unit is out of the way and the unit and associated wiring does not interfere with surgical operations.

Claims 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of DE2308214, Theilacker et al (US5138138), and further in view of Ligeras (US5516189). The claims differ from the previously cited prior art in calling for DC or AC power. Powering an electric heater for supporting a patient from either AC or DC power is conventional and well known in the art as evidenced by Ligeras (US5516189) noting the abstract. In view of Ligeras (US5516189), it would have been obvious to one of ordinary skill in the art to provide either AC or DC power for the

previously described apparatus so that the heater could be operated at locations remote from commercial AC mains power thereby promoting portability.

Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of DE2308214, Theilacker et al (US5138138), and further in view of Glucksman (US5720774). The claim differs from the previously cited prior art in calling for a waterproof cover enclosing at least a portion of the foam pad and the heating element. Providing a waterproof cover enclosing foam pads and a heating element sandwiched therebetween is conventional and well known in the art as evidenced by Glucksman (US5720774) noting waterproof cover 2, 2' that encloses foam layers 4, 4' and heating element 3. The waterproof cover inherently has antimicrobial properties. See Figs. 2A and 2B and col. 5, lines 19-45. Note also flexible coupling 23 that would enable hinging of the respective pads with respect to each other. In view of Glucksman (US5720774), it would have been obvious to one of ordinary skill in the art to provide a waterproof cover enclosing the foam layers of the previously described apparatus so that moisture ingress into the foam layers and electric heater and associated electrical connections was prevented, thereby improving safety and prolonging the life of the heater.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of DE2308214, Theilacker et al (US5138138), and further in view of DE3707948. The claim differs from the previously cited prior art in calling for a

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reflective sheet wherein the foam pad is between the reflective sheet and the heater.

Providing such an arrangement is conventional and well known in the art as evidenced by DE3707948 noting reflective sheet 7 in Fig. 2 disposed on the opposite side of foam layer 6 so that heat is directed upwardly back towards the heater and the area to be heated. In view of DE3707948, it would have been obvious to one of ordinary skill in the art to provide a reflective sheet on the side of the foam layer opposite that of the heater so that heat is reflected back towards the heater and towards the workpiece thereby avoiding undesired wasted heat energy.

Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP10-43258 in view of DE2308214, Theilacker et al (US5138138), Stinger (US3900654), and further in view of Fenner, Sr. (US5031261). The claim differs from the previously cited prior art in calling for the heater to comprise copper braids and carbon-filled plastic material. Providing an electric heater with planar copper electrodes connected to a carbon-filled plastic material is conventional and well known in the art as evidenced by Stinger (US3900654) noting copper electrodes 3 connected to carbon-filled plastic material 1 which provides heat upon energization. The heater is flat, thin, flexible, and provides heat over an extended area. See col. 1, lines 13-30 and col. 2, lines 26-46. In view of Stinger (US3900654), it would have been obvious to one of ordinary skill in the art to provide a carbon-filled plastic material and planar copper electrodes so that a heater is provided that is at, thin, flexible, and provides heat over an extended area, yet is economical to manufacture.

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With regard to the copper electrodes being claimed as braids, no criticality is seen in the use of braids in lieu of the flat copper foil electrodes of Stinger (US3900654). The claim also differs from the previously cited prior art in calling for the upper foam pad to have a higher density than the lower pad. Providing laminated upper and lower foam pads for patient support where the upper foam pad has a higher density is conventional and well known in the art as evidenced by Fenner, Sr. (US5031261) noting col. 3, lines 17-22 and 52-56 (upper layer density = 2.0 - 2.7 lbs/ft<sup>3</sup> and lower layer density = 1.8-2.0 lbs/ft<sup>3</sup>). According to col. 2, lines 4-23, such a density differential provides an improved floatation characteristic that avoids high pressure points on the patient. In view of Fenner, Sr. (US5031261), it would have been obvious to one of ordinary skill in the art to provide a higher density upper foam layer with respect to the lower foam layer in the previously described apparatus in order to provide an improved floatation characteristic that avoids high pressure points on the patient. Moreover, no criticality is seen in the specific recited density values and IFD ratings claimed; therefore, such values are not patentable over the foam layers of the prior art.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225



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USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 7-12, 15-27, 30-36, 40-53 and 64-69 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-65 of U.S. Patent No. 6,653,607. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application are merely broader in scope than the patented claims. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993). Moreover, there is no apparent reason why applicant could not have presented the instant claims during prosecution of the '607 patent.

#### ***Allowable Subject Matter***

Claims 13, 28, and 29 are allowable over the art of record.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Jeffery whose telephone number is (703) 306-4601. The examiner can normally be reached on Monday - Thursday from 7:00 AM to 4:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans, can be reached on (703) 305-5766. All faxes should be sent to the centralized fax number at (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

A handwritten signature in black ink, appearing to read "John A. Jeffery", with a stylized flourish at the end.

**JOHN A. JEFFERY  
PRIMARY EXAMINER**

**6/17/04**